



DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[EOIR Docket No. 18-0202]

RIN 1125-AA81

EOIR Electronic Filing Pilot Program

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Public notice.

SUMMARY: The Executive Office for Immigration Review (EOIR) is creating a voluntary pilot program to test an expansion of electronic filing for cases filed with the immigration courts and the Board of Immigration Appeals (BIA). This notice describes the procedures for participation in the pilot program.

DATES: The pilot program will be in effect from July 16, 2018 until July 31, 2019. Initially, expanded electronic filing will be available in six immigration courts, but will be expanded to all remaining courts and the BIA incrementally. Eligible attorneys and accredited representatives may choose to participate at any time during the pilot program and will be permitted to continue using electronic filing throughout the pendency of electronically filed cases.

FOR FURTHER INFORMATION CONTACT: Nathan Berkeley, Acting Chief, Communications and Legislative Affairs Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2618, Falls Church, VA 22041, telephone (703) 305-0289 (not a toll-free call) or email PAO.EOIR@usdoj.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Congress passed the Government Paperwork Elimination Act, which required federal agencies to provide the public with the ability to conduct business electronically with the federal government. *See* Public Law 105–277 (Oct. 21, 1998). Similarly, in 2002, Congress passed the E-Government Act of 2002, which promoted electronic government services and required agencies to use internet-based technology to increase the public’s access to government information and services. *See* Public Law 107-347 (Dec. 17, 2002).

As a result, EOIR began pursuing a long-term agency plan to create an electronic case access and filing system for the immigration courts and BIA. *See* 68 FR 71650 (Dec. 20, 2003) (“The Department is . . . designing an electronic case access and filing system, to comply with the Government Paperwork Elimination Act, to achieve the Department’s vision for improved immigration adjudication processing, and to meet the public expectations for electronic government.”).

On April 1, 2013, EOIR completed the first portion of their electronic system by establishing eRegistry, a mandatory electronic registry for all attorneys and accredited representatives who practice before the immigration courts and the BIA. *See* 78 FR 19400 (April 1, 2013). At the same time, EOIR began allowing attorneys and fully accredited representatives¹ to electronically file the Notice of Entry of Appearance as Attorney or Representative (Form EOIR-27 and Form EOIR-28, for the BIA and immigration courts, respectively).

¹ EOIR’s Office of Legal Access Programs reviews non-attorneys’ applications to become fully accredited representatives who, upon approval, can represent aliens in immigration court proceedings and before DHS. For more information, please see <https://www.justice.gov/eoir/recognition-and-accreditation-program>. This pilot is not available to partially accredited representatives.

Next, on May 4, 2015, EOIR launched eInfo, which allows registered attorneys and accredited representatives to view their clients' case information.² *See* News Release, *The Executive Office for Immigration Review Announces I³*, <https://www.justice.gov/sites/default/files/pages/attachments/2015/09/17/e-info-news-release-05042015.pdf>. Attorneys and accredited representatives can login to the eInfo application to view a list of cases for which they have an active Notice of Entry of Appearance (Form EOIR-27 and/or Form EOIR-28) and select one to view case-related information.

Since January 2017, EOIR has been undertaking additional and more expansive initiatives to reduce its longstanding backlog of cases and working to ensure the more efficient handling of matters before the immigration court system. To that end, EOIR is moving towards implementing a long sought-after electronic system component that will allow parties to electronically file case-related documents with the immigration courts and the BIA.

II. Pilot Program

EOIR is now planning to pilot an expansion of electronic filing within eInfo to allow certain parties to electronically file case-related documents with the immigration courts and, eventually, the BIA. With the exception of entering a Notice of Entry of Appearance through I³, parties before the immigration courts and the BIA are currently required to submit paper filings to EOIR and to serve a copy on the other party in-person, by mail, or through DHS's eService portal.

Expanded electronic filing will meet the long sought-after requests of the private bar to accept electronic filings. *See, e.g.*, AILA Testimony on EOIR, AILA Doc. No. 10061664 (June 17, 2010). As the expanded electronic filing pilot is a major change to EOIR processes, the pilot

² EOIR also consolidated eRegistry, eInfo, and eFiling into a single application suite, known as I³. For more information about I³, please visit <https://www.justice.gov/eoir/internet-immigration-info>.

will be limited to DHS personnel, and registered attorneys and accredited representatives eligible to practice before EOIR.

The pilot will allow attorneys and accredited representatives to electronically file case-related documents directly through eInfo. Similarly, DHS representatives will be able to login to a parallel portal to electronically file case-related documents. The expanded electronic filing pilot will allow the parties to file documents at any time of day without having to mail the documents to the court or BIA, or to file them in-person at the court or BIA. Parties will receive an on-screen confirmation with a unique transaction ID, as well as an encrypted verification email, when their document is successfully uploaded. They will also receive an encrypted notification email when a new document has been filed in their case by the opposing party. Instructions to decrypt emails will be available on EOIR's website. This will provide the parties with near-immediate access to filings in their cases. Both pilot participants and non-participants will be able to view any documents contained in their case by accessing eInfo and requesting to download the electronic Record of Proceeding (eROP).

To ensure that parties receive proper notice from the opposing party to their case, pilot parties will be required to continue to meet current service requirements³ for any documents that they are electronically filing with the court or BIA. Participation in the pilot neither relieves parties of the duty to provide a certificate of service with filings nor changes the time at which response documents are due. The timeline for responses begins at the time the system sends an email regarding a filing to the opposing party.

Case-related documents EOIR generates at the pilot locations, such as decisions, orders, or notices, will be served only electronically on participating parties. Both parties will receive an

³ For information on service requirements, please see the Immigration Court Practice Manual and the Board of Immigration Appeals Practice Manual at www.justice.gov/eoir.

encrypted email from EOIR with the document attached. This will constitute valid service and proper notice by EOIR during the pilot. To effectuate such service, attorneys and accredited representatives will be required to maintain a valid email address in the eRegistry application.

Throughout the pilot, EOIR will continue to refine and develop electronic filing. In the future, the agency envisions making electronic filing mandatory for all attorneys and accredited representatives appearing before EOIR and optional for pro se respondents. To ensure the most efficient and user-friendly system possible, EOIR hopes to receive feedback from participating parties, both internal and external. Participants will be able to provide input at any time through an email link within eInfo.

III. Eligibility to Participate

Beginning in July 2018, EOIR is planning to roll out the expanded electronic filing to six initial pilot courts: San Diego and York in July; Denver and Atlanta in August; and Charlotte and Baltimore in September. Following an internal assessment of the pilot in those courts, EOIR anticipates expanding the pilot to additional courts every few weeks beginning in December 2018. EOIR will also be working towards implementing expanded electronic filing at the BIA during this time period. Information regarding future pilot expansion will be located on EOIR's website at <https://www.justice.gov/eoir/internet-immigration-info>.

Participation in the pilot program is voluntary. An opportunity to participate in the pilot will be available throughout the duration of the pilot to all EOIR-registered attorneys and accredited representatives in good standing. Information on participating in the pilot will be provided on EOIR's website at <https://www.justice.gov/eoir/internet-immigration-info>. Only registered attorneys and accredited representatives will be permitted to participate in the pilot.

IV. Procedures for Participation

To participate in the expanded electronic filing pilot, attorneys and accredited representatives must be registered with EOIR through eRegistry pursuant to 8 CFR 1292.1(f). The eRegistry process for attorneys and accredited representatives will not change. Similarly, to participate in the pilot DHS personnel will also use eRegistry to register with EOIR.

Once the eRegistry process is complete, attorneys and accredited representatives will have access to eInfo, located at <https://www.justice.gov/eoir/internet-immigration-info>, and DHS personnel will have access to the parallel DHS electronic filing portal. When an attorney or accredited representative first accesses eInfo, the option to participate in the expanded electronic filing pilot is presented. The attorney or accredited representative must agree to a set of terms and conditions for the pilot, which explain the requirements for participation in the pilot and are mandatory for pilot participants. Failure to follow the pilot requirements to which attorneys and representatives agree upon signing up and agreeing to the terms and conditions may lead to serious adverse consequences, such as filings being rejected or not receiving service of documents from EOIR. Any future changes to the terms and conditions will be presented to the attorney or accredited representative in eInfo and will require their voluntary acceptance for continued participation in the pilot.

An attorney or accredited representative's acceptance of the pilot's terms and conditions is an agreement to participate in the pilot for all cases for which they have filed a Notice of Entry of Appearance and an eROP is available. Throughout the pilot at participating immigration courts, eROPs will be available for all cases in which one of the parties files an initiating document, such as a Form I-862, Notice to Appear; Form I-863, Notice of Referral to Immigration Judge; or a bond redetermination request. An eROP will also be available when an attorney or accredited representative files a Notice of Entry of Appearance and the court staff

scan the existing paper record of proceedings into the pilot system. Representatives will be able to tell which cases have an eROP by the active upload button that will appear in the system.

Attorneys and accredited representatives will be able to electronically file documents in eligible cases beyond the pilot end date until the conclusion of all administrative proceedings in those cases, including any remands from the federal courts. In any case where a motion for change of venue is granted from a pilot location to a non-pilot location, or a clerical transfer occurs from a pilot location to a non-pilot location, the attorney or accredited representative will be required to follow the current non-electronic filing requirements at the non-pilot location.

The attorney or accredited representative may leave the pilot at any time by selecting the “opt out” option in eInfo. By leaving the pilot, the attorney or accredited representative must revert to following all current procedures and requirements for non-electronic filing with the immigration courts and BIA for those cases that were part of the pilot. The eROP for those files already electronically filed will remain available for download, but electronic scanning or filing will be unavailable to that attorney during the pilot period unless the attorney opts back in to the pilot. The attorney or accredited representative may choose to join the pilot again by returning to eInfo and re-accepting the pilot terms and conditions during the pilot period.

V. Additional Information

Registered attorneys and registered accredited representatives will be held responsible for all activity conducted under their accounts. Misuse of the electronic filing system may result in EOIR revoking an attorney or accredited representative’s participation in the pilot, and in referral to EOIR’s disciplinary counsel or anti-fraud officer, or other appropriate parties, as necessary.

If an attorney or accredited representative has been disbarred or suspended from practice before the immigration courts or the BIA or is otherwise not authorized to practice law before

EOIR, EOIR will deactivate the user's EOIR ID, which provides access to electronic filing, unless and until the BIA reinstates or otherwise permits the attorney or accredited representative to resume practice. *See* 8 CFR 1003.101 *et seq.*

EOIR will not initially collect or accept any fee payments through this expanded electronic filing pilot. Any fees related to applications, forms, motions, or appeals that require a fee payment should continue to be paid to the Department of Homeland Security or the BIA through current procedures. *See* 8 CFR 1003.24. Once expanded electronic filing is available at the BIA, EOIR expects electronic payments will be available for appeals and BIA motions that require a fee.

Dated: June 19, 2018

Nathan Berkeley
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BAC 4410-30

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